THE HIGH COURT OF UTTARANCHAL AT NAINITAL
Appeal from Order No. 951 of 2001.
(Old F.A.F.O. No. 728 of 1985)

The State of U.P. through Superintending Engineer XIII Circle, U.P. P.W.D., Uttarkashi.

…**Appellant.**

Vs.

1. Brijbasi Construction Enterprises, Bhandari Bhawan, Vikash Nagar, Dehradun through Kamal Kishor.
2. Sri Kamal Kishor, Joint Managing Partner of M/s Brijbasi Construction Enterprises.
3. Sri Bhaghwan Bansal,
4. Shri Shyam Sunder, C/O M/s Brijbasi Construction Enterprises Bhandari Bhawan, Vikash Nagar, Dehradun.

… **Respondents.**

Sri Nand Prasad, learned Standing Counsel for the appellant.
Sri Rajendra Dobhal, Adv., learned counsel for respondents.

Date June 19, 2006
PC: (Hon'ble B.S.Verma, J.)

This appeal is directed against the judgment and decree dated 25-2-1985 passed by the then Civil Judge First, Dehradun, whereby the learned Civil Judge has made the award dated 11-10-1983 passed by the Arbitrator, Sri A.N.Shastri, Superintending Engineer, the Rule of Court, in Original Suit No. 45 of 1985, M/s Brijbasi Construction Enterprises Vs. State of U.P. The Arbitrator has accepted claim of Rs. 10,882.50 in favour of the contractor and has also awarded interest as mentioned in the award.

Relevant facts are that the plaintiff M/s Brijbasi Constructions was given a contract of construction of buildings of the Degree College and a contract bond bearing Contract No. 6/S.E.-13/73-74 was executed between the parties, wherein there is agreement clause for referring the dispute to the Arbitrator. In the course of execution of contract, certain disputes have arisen between the parties, which were referred to the Arbitrator for adjudication and award. Ultimately, the Arbitrator gave his award dated 11-10-1983. Notice was issued to parties and the State of U.P. filed its objection before the court below alleging that the Arbitrator has misconducted himself and the proceedings as well as

that the award was invalid. The objection filed by the State was registered as Misc. Case No. 240 of 1983. It was contended by the State that the Arbitrator Sri. A.N.Shastri had no right to pass the award because before passing the award, the said Arbitrator had been transferred from his post and the arbitrator was appointed by designation and not by name. The claimants have resisted to the objections raised by the State and alleged that the act done by the Arbitrator was within the competence of the learned Arbitrator. It was asserted that the arbitrator was appointed by name, i.e. individual capacitgy, therefore, the arbitrator was fully justified in concluding the arbitral proceeding and give the award.

The learned Civil Judge on the objections and reply filed by the parties framed necessary issues in the case, heard the parties and after perusing the material, concluded that Sri A.N.Shastri was appointed Arbitrator to settle the disputes between the parties. The State has hammered the proceedings on the ground that the arbitrator had not sent the signatures of Sri K.K.Jauhari for expert opinion. In my view, it was for the party aggrieved to have led evidence whatsoever was found necessary to suit its purpose. It was fully open to the State to have produced the expert opinion on record, for which the State had ample opportunity before the arbitral proceedings were concluded and award was passed. Ultimately, after having dealt with all the aspect of the case, the learned Civil Judge concluded the impugned order in as many as 19 pages and passed the order under challenge thereby the Award was made Rule of the Court.

I have heard learned Standing Counsel Sri Nand Prasad, for the State and perused the record. It is not disputed that the contract referred to above was executed between the parties and there was arbitration clause for referring the disputes to the Arbitrator. It is also not disputed that Sri A.N.Shastri was

appointed Arbitrator in the matter. In these premises, the controversy in appeal has to be determined.

At the out set, it may be mentioned that the order of appointment of Arbitrator clearly shows that Sri A.N.Shastri, Superintending Engineer, was appointed as Arbitrator to adjudicate upon the disputes referred to him. He was fully competent to give the award. There is no force in the stand taken by the State that the Arbitrator was appointed only by designation. I uphold the finding of the learned Civil Judge, who has elaborately discussed the matter in the impugned order.

It may also be added that in the arbitral proceedings, it is for the party to the proceedings to have applied to the Arbitrator to file the evidence whatsoever deemed fit to suit its purpose. The grievance of the State is that the Arbitrator misconducted the proceedings because he did not obtain expert opinion from the Handwriting Expert. The learned Civil Judge has given categorical finding that sufficient opportunity was given to the objector-State and it was for the State to have filed or led evidence to suit its purpose before the Arbitrator. It was for the own slackness on the part of the State that they did not prefer to file the evidence and now a lame stand has been taken to take advantage out of its own fault. The Arbitrator has nowhere mis-conducted himself or the proceedings. The learned Standing Counsel could not point out a single instance on the record of the lower court.

Having gone through the impugned order as well as the lower court record, I find that the appeal is devoid of merit. It is held that neither the Arbitrator had misconducted himself or the proceedings. The Award dated 10-11-1983 is perfectly valid and legal. The learned Civil Judge has rightly rejected the objections raised by the State and the award was rightly made Rule of the

Court. The finding of the court below does not call for interference in this appeal.

The appeal is dismissed. The impugned order, under appeal, is upheld. No order as to costs.

(B.S.Verma, J.)

RCP